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BEFORE THE  
**Federal Communications Commission**  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

In re applications of

**DARRELL BRYAN**

**SBH PROPERTIES, INC.**

For a Construction Permit  
for a New FM Station on  
Channel 276A (107.3 MHz)  
in Tusculum, Tennessee

) MM Docket No. 93-241

) File No. BPH-920109MA

) File No. BPH-920123MD

RECEIVED

DEC 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Hon. John M. Frysiak  
Administrative Law Judge

**OPPOSITION TO SUPPLEMENT TO PETITION TO ENLARGE ISSUES**

Darrell Bryan ("Bryan") by his attorney hereby submits his Opposition to the Supplement to Petition to Enlarge Issues, filed by SBH Properties, Inc. and states the following

1. In its "supplement", SBH requests addition of a new issue against Bryan addressed to whether Darrell Bryan violated the Commission's rules relating to the availability of the public file at WSMG (AM). It bases its request on a declaration of SBH voting stockholder William Seaver who states that he went to WSMG on December 3, 1993 and asked to speak to either Mr. Bryan or Kathy Knight. He states that when he was informed that they were not at the station and then asked to inspect the public file, he was told by WSMG employee Connie Thompson that "she had been expressly advised by Darrell Bryan not to permit anyone to review the public file unless he was present at the station". Mr. Seaver states that it was not possible for him to return to the station at a later time, because he had a prior business commitment in Florida the following day, that he made a few other stops and then began the trip back to Florida.

2. Attached hereto as Attachment A is a declaration of Darrell Bryan. Mr. Bryan points out that when the SBH representative, Mr Murray, had visited the station in July, Ms. Thompson

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had given him access to the station's operating logs which are not supposed to be accessible to the public. He states that because of that incident, he told Ms. Thompson that he "wanted to be informed immediately if anyone wanted to inspect the file so that I could come out of my office and personally handle the request". Mr. Bryan states that he never told Ms. Thompson to deny access to the file if he was not at the station.

3. Mr. Bryan states that when he returned to the station on December 3 and was informed that Mr. Seaver had been denied access to the file, he reprimanded Ms. Thompson and attempted to locate Mr. Seaver. He states that Kathy Knight telephoned Mr. Seaver's mother, was told by her that Mr. Seaver was still in town, but, Mr. Seaver never returned the call. Mr. Bryan points out that Ms. Thompson offered to provide Mr. Seaver with the file containing the letters but that he refused, and that if the file with the letters had been provided, Mr. Seaver would have had access to the entire file. Finally, he points out that Ms. Thompson resigned on December 13, effective December 24.

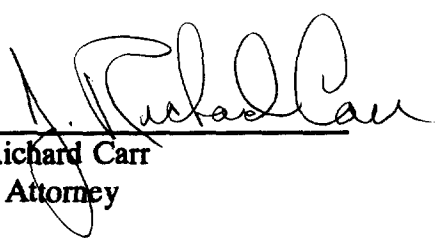
4. Attached hereto as Attachment B is a declaration of Ms. Connie Thompson in which she states that when Mr. Seaver appeared at the station at approximately 9:15 a.m. on December 3, she denied him access to the public file because "she had gotten the mistaken impression" that Mr. Bryan did not want anyone looking at the file unless he was present. She states that she told Mr. Seaver that Mr. Bryan and Ms. Knight would return to the station around 10:00 a.m. and offered to make the letters in the public file available in the meantime. Finally, she states that when he returned to the station, Mr. Bryan "told me that I should have made the file available to Mr. Seaver".

5. SBH argues that the unavailability of the public file "was clearly willful, inasmuch as Ms. Thompson had been expressly ordered by Darrell Bryan not to make the station's public inspection file available to anyone, unless Bryan was Present". However, it is clear from the Thompson declaration that the denial of the file was based on her "mistaken impression" and not on any direct order of Mr. Bryan. It is submitted that what is involved here is not a case of an interested member of the public being denied access to the public file, but that of a competitor in a comparative hearing whose primary interest is in finding some conduct to warrant filing for an issue and not in actually inspecting the public file.

6. There is no evidence that there is a pattern of refusing to provide access to the public file. An isolated incident where a station public file is not accessible is not sufficient to warrant the addition of a public file issue. In fact, it is clear that the incident involving Mr. Seaver on December 3 was nothing more than the result of honest confusion on the part of a station employee. Further, if Mr. Seaver had waited approximately 45 minutes, the file would have been available. There is no basis for addition of the requested issue.

Respectfully submitted,

DARRELL BRYAN

By:   
J. Richard Carr  
His Attorney

P.O. Box 70725  
Chevy Chase, MD 20813-0725

December 28, 1993

## **ATTACHMENT A**



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#### DECLARATION OF DARRELL BRYAN

When Mr. Murray had inspected our files on behalf of SBH in July, our complete Public File was not available to him because portions of the file were being reorganized. At that time, Connie Thompson gave him access to our operating logs. Subsequently, I told my staff and, Connie in particular, not to let anyone see the engineering log or our program logs, other than the FCC. Because of the confusion with Mr. Murray's visit when he was given more than he was entitled to, and the fact that our file appeared to be in disarray after he visited, I told Ms. Thompson that I wanted to be informed immediately if anyone wanted to inspect the file so that I could come out of my office and personally handle the request. However, I also explained to her that the Public File was to be available to the general public during regular business hours.

What Ms. Thompson told Mr. Seaver on December 3 was not per my instructions. I did NOT tell her to deny access to the file if I was not at the station. I only wanted to be notified and to handle the matter if I was at the station. Upon returning to the station on December 3 and being informed that Mr. Seaver had asked for the file, I immediately reprimanded Ms. Thompson and



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then tried to locate Mr. Seaver. Kathy Knight telephoned Mr. Seaver's mother, who lives in Tusculum, and was told by her that he was still in town, but he did not return the phone call to Kathy. I wanted to let him know that our Public File was available and that he could return and see it.

The only thing I can figure out as far as why Ms. Thompson misunderstood the instructions was that she had mishandled the previous inspection and I guess she was afraid of making a mistake. Ms. Thompson states that she told him that he could see letters in the file but he refused. The letters she referred to were behind the issues lists, so if Mr. Seaver had looked at the letters in the Public Affairs drawer, he would have had access to the entire file. What doesn't make sense about Ms. Thompson's actions was the fact that if she showed someone the letters they would see the entire file anyway.

I am totally puzzled by Ms. Thompson's actions; in July she allowed Mr. Murray to see much more than required, and in December basically she wouldn't let Mr. Seaver see anything.

Ms. Thompson resigned on December 13, effective December 24. I think she realized she really messed up.

I certify, under penalty of perjury, that the above statements are true and correct.

A handwritten signature in black ink that reads "Darrell Bryan".

Darrell Bryan

12-17-93

Date:

## **ATTACHMENT B**



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DECLARATION OF CONNIE THOMPSON

On December 3 at around 9:15 a.m. a man came into the office and asked for Darrell. I told him he wasn't in. He asked for Kathy. I said they were both out. He said his name was Bill Seaver and he wanted to look at the Public Affairs file. I told him I couldn't let him do that. Unfortunately, I had gotten the mistaken impression that Darrell didn't want anyone looking at the file unless he was present. I offered to let him see the letters in the file. He said no. He wrote something on his legal pad which I assume was the day and time. He asked my name and wrote that down. I tried to reach Darrell on his car phone when Seaver left, and there was no answer. I had told Seaver I didn't know where Darrell and Kathy were and that they would be back around 10:00 a.m. at which point he left. When Darrell returned, he told me that I should have made the file available to Mr. Seaver.

I certify, under penalty of perjury, that the above statements are true and correct.

*Connie Thompson*  
Connie Thompson

Date: 12-17-93



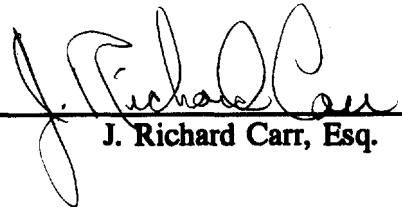
## CERTIFICATE OF SERVICE

I, J. Richard Carr, hereby certify that copies of the foregoing "Opposition to Supplement to Petition to Enlarge Issues" were sent via first class mail, postage prepaid, or as otherwise indicated to each of the following on this 28th day of December, 1993:

The Hon. John M. Frysiak\*  
Administrative Law Judge  
Federal Communications Commission  
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\* Hand Delivery

\*\* Via Fax and Mail